

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
CBS Broadcasting Inc.)	File No. EB-04-IH-0110
)	Facility ID No. 9628
Licensee of Station KCBS-TV,)	
Los Angeles, California)	

ORDER ON RECONSIDERATION

Adopted: June 21, 2005**Released: June 23, 2005**

By the Acting Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Order on Reconsideration, we deny the Petition for Reconsideration ("Petition") dated October 21, 2004, of Judi and John Estrin ("Petitioners") of an Enforcement Bureau ("Bureau") letter. By that letter, the Bureau denied the Petitioners' complaint against CBS Broadcasting Inc. ("CBS"), licensee of Station KCBS-TV, Los Angeles, California.¹ We agree with the conclusion reached in the Denial Letter, that, based upon the information before us, Petitioners have failed to demonstrate that CBS violated section 73.1216 of the Commission's rules² with respect to "The Extra Point Sweepstakes" contest conducted during December 2003 over CBS's Station KCBS-TV.

II. BACKGROUND

2. On February 27, 2004, Petitioners filed a written complaint against CBS with the Commission.³ They alleged that CBS had overstated the announced value of the prize in its "The Extra Point Sweepstakes" contest conducted over Station KCBS-TV, a trip to the 2004 Super Bowl game in Houston, Texas. According to the Complaint, CBS had promoted the contest prize as being worth \$8,550.⁴ Petitioners claimed, however, that the "actual sums spent" for the trip that Mrs. Estrin had

¹ Letter from William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission to Judi and John Estrin, dated October 13, 2004 ("Denial Letter").

² 47 C.F.R. § 73.1216.

³ See Letter from Judi and John Estrin to Enforcement Bureau, Federal Communications Commission, dated February 27, 2004 ("Complaint").

⁴ *Id* at 1.

received as the contest winner were only \$4,218.40.⁵ For this reason, Petitioners expressed their concern that their federal tax liability for the prize would be considerably more than the actual value of the trip.⁶

3. The Bureau subsequently directed CBS to provide information about the contest and the value of the prize that it had awarded.⁷ In its response, CBS provided declarations and accompanying materials indicating that it so valued the prize because it paid a total of \$8,550 for the trip to Map Marketing and Incentives LLC (“Map Marketing”), the agency that arranged for and provided the Super Bowl trip for the winning contestant.⁸ According to the CBS Response, Map Marketing paid \$6,575 to its vendors for related services and received from CBS a fee in the amount of \$1,975.⁹ In a reply pleading, Petitioners maintained that, notwithstanding CBS’s representations, the hotel at which they stayed as part of the contest prize trip was “an older motor hotel” located “several miles from the downtown area” and that the Super Bowl seats they were awarded were not “premium seats” in a “prime location,” as promoted over Station KCBS-TV. They also objected to the inclusion of the agency fee that CBS had paid to Map Marketing in the valuation of the prize.¹⁰

4. In the Denial Letter, we found that the Petitioners had provided no basis for us to conclude that CBS failed to substantially comply with the requirements of section 73.1216 of the Commission’s rules with respect to “The Extra Point Sweepstakes” contest. Specifically, we determined, notwithstanding Petitioners’ arguments to the contrary, that CBS had provided reliable documentation adequately supporting its position that the amount that it had paid to Map Marketing for the contest prize was that of the prize value that it had announced during the contest over Station KCBS-TV. Thus, we concluded that CBS had conducted the contest as announced, in compliance with our rule.¹¹

5. In their Petition, Petitioners challenge CBS’s valuation of the contest prize and the veracity of its Response to the Bureau’s letter of inquiry. Thus, they state that, although the CBS Response included a breakdown of the cost of the various elements contained in the prize trip, the breakdown improperly valued the airfare at \$1,200, when it was actually only \$618.40.¹² In its opposition to the petition,¹³ CBS acknowledges that it erroneously reported in its Response to the Bureau’s LOI the amount that Map Marketing had paid to a vendor for Petitioners’ airfare, the result of a misunderstanding about the nature of the information that Map Marketing provided to CBS.¹⁴ However, CBS confirms that

⁵ *Id.*

⁶ *Id.* at 2.

⁷ See Letter from William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to CBS Broadcasting Inc., dated July 30, 2004.

⁸ See Letter from Howard F. Jaeckel, Vice President and Associate General Counsel, CBS Broadcasting Inc., to Enforcement Bureau, Federal Communications Commission, dated September 1, 2004 (“CBS Response”).

⁹ See CBS Response, Exhibit C, Declaration of Pat Ranier, dated September 1, 2004.

¹⁰ See Letter from Judi and John Estrin, to Enforcement Bureau, Federal Communications Commission, dated September 8, 2004 (“Reply”).

¹¹ See Denial Letter.

¹² See Petition at 1.

¹³ See Letter from Howard F. Jaeckel, to Enforcement Bureau, Federal Communications Commission, dated November 3, 2004 (“CBS Opposition”).

¹⁴ *Id.*

it “paid \$8,550 to Map Marketing to provide the trip package.”¹⁵ By letter dated November 7, 2004, Petitioners responded, essentially repeating the arguments contained in their Petition.¹⁶

III. DISCUSSION

6. Section 73.1216 provides that “[a] licensee that broadcasts or advertises information about a contest that it conducts shall fully and accurately disclose the material terms of the contest, and shall conduct the contest substantially as announced or advertised. No contest description shall be false, misleading, or deceptive with respect to any material term.”¹⁷ Material terms include those factors that define the operation of the contest and that affect participation therein, including, among other things, the extent, nature and value of prizes and the basis for valuation of prizes.¹⁸

7. CBS promoted the Super Bowl vacation package as worth \$8,550, the price it paid to Map Marketing for the package. Petitioners argue that the value CBS should have promoted was not CBS’s purchase price, but the price paid by Map Marketing for the various components of the package.¹⁹ The Commission has endorsed the valuation of prizes at their retail value, *i.e.*, the price that contestants could expect to pay if they purchased the prize themselves.²⁰ Petitioners do not allege, and there is no evidence to suggest, that the negotiations between CBS and Map Marketing were not at arms-length.²¹ Indeed, Map Marketing sold similar packages at a substantially higher price than that paid by CBS.²² We find, therefore, based on the record before us that \$8,550 was the retail value of the prize package.²³

¹⁵ *Id.* at 1.

¹⁶ See Letter from Judi and John Estrin, to Enforcement Bureau, Federal Communications Commission, dated November 7, 2004 .

¹⁷ 47 C.F.R. § 73.1216.

¹⁸ *Id.* at n.1.

¹⁹ CBS admits that it overstated in its Response the amount of money that Map Marketing had actually paid for Petitioners’ airfare. CBS Opposition at 1. We note that this error was contained in the Declaration of Map Marketing Vice President Pat Ranier and relied on by CBS. Petitioners have provided no evidence suggesting that CBS knew or should have known of the error when it submitted the Declaration with its LOI Response. See 47 C.F.R. § 1.17 (imposing duty on respondents to have a reasonable basis for material factual statements to the Commission). Accordingly, we deny Petitioners’ request that we should impose a sanction against CBS for this error.

²⁰ See *Dena Pictures, Inc. et al*, Memorandum Opinion and Order, 71 FCC 2d 1402, 1409, ¶ 15 (1979) (Commission rejected allegation of a violation of the contest rule where a contest purported to give away \$10,000 worth of records, and the records awarded did in fact have a “market retail value” of \$10,000); *Liability of Birch Bay Broadcasting, Co., Licensee of Station KARI, Blaine, Washington*, Memorandum Opinion and Order, 38 FCC 2d 988, 990, ¶ 7 (1973) (Commission found the value of each prize in an alleged lottery to be \$20, the “retail value” of each prize, despite a conflicting valuation by the licensee).

²¹ We note there could be circumstances in which a licensee appears to have “overpaid” an agent for prizes that might raise concerns under section 73.1216, but there is no evidence to support such an allegation here.

²² See CBS Response, Exhibit H (promotional flyer for Map Marketing and Incentives Super Bowl XXXVIII package for \$10,500 that included same components as prizes here, with addition of rental car for four nights, invitation to private party, and two tickets to the “NFL Experience”).

²³ With respect to Petitioner’s complaints about the quality of their hotel and their Super Bowl seats, we find that CBS’s and promotional announcements and contest rules comply with the requirements of section 73.1216 in that

8. The use of specialized agents like Map Marketing to obtain vacation packages is a common and reasonable practice, particularly for highly popular events like the Super Bowl. Through such agents, licensees minimize the administrative burden on their own resources, gain access to tickets and accommodations that might otherwise be unavailable, and reduce the risk of cost overruns for hotly contested events.²⁴ Under Petitioners' reading of section 73.1216, however, licensees would have to promote their prizes only for their wholesale value, *i.e.*, the price paid by the entity who furnished the prize to the licensee. Such a reading places an unreasonable burden on licensees and is inconsistent with the intent of the rule. We therefore conclude that CBS lawfully promoted the prize package as valued at \$8,550, the retail value of the package, and deny the Petition for Reconsideration.²⁵

IV. ORDERING CLAUSES

9. ACCORDINGLY, IT IS ORDERED that, pursuant to section 405 of the Communications Act of 1934, as amended, and section 1.106 of the Commission's rules, the Petition for Reconsideration filed on October 21, 2004, by Judi and John Estrin, IS DENIED.

10. IT IS FURTHER ORDERED that a copy of this Order shall be sent by Certified Mail - Return Receipt Requested, to Judi and John Estrin, 622 North Orange Street, Orange, California 92867-6734, and to Howard F. Jaeckel, Vice President and Associate General Counsel, CBS Broadcasting Inc., 1515 Broadway, New York, New York 10036-5794.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Acting Chief, Enforcement Bureau

it promised nothing more than Petitioner's received. *See, e.g.*, CBS Response, Exhibit E (promotional announcement; "send in your scorecard for a chance to win a trip to see football's biggest spectacle"); Exhibit F (contest rules; "One Grand Prize Winner will win Two (2) round-trip airline tickets from Los Angeles to Houston, Texas; Four (4) nights hotel accommodations for two persons; Two (2) tickets to the pro-football championship game on February 1st at Reliant Stadium in Houston, Texas; and round-trip transfers via motor coach to and from the game. Value of the Grand Prize is: \$ 8, 550.00").

²⁴ CBS purchased the package from Map Marketing in October 2003, more than three months before the Super Bowl, and two months before it ran the "Extra Point Sweepstakes." Moreover, under the terms of the deal, Map Marketing assumed the risk that the various components of the package would cost more than price paid by CBS. As CBS properly observes, many of the elements of the prize package here (e.g., game tickets, hotel rooms) are subject to "supply and demand, which in turn are affected by a number of factors, including the teams that ultimately face each other in the Super Bowl." CBS Opposition at 2 n.1.

²⁵ Petitioners' complaints about their tax liability based on CBS's valuation of the prize package are irrelevant to whether CBS complied with the Commission's rules. Moreover, we note that the record evidence reveals that, after being selected as the contest winner, Ms. Estrin executed a release form, in which she acknowledged the \$8,550 prize value, her responsibility "for any and all federal, state and local taxes" arising from the receipt of the prize and the fact that the prize could not be redeemed for cash. CBS Response, Exhibit B, Declaration of Phyllis Mazzocchi dated September 1, 2004, Exhibit 1, Prize Receipt/Release Form, dated January 8, 2004.